



DEPARTMENT OF THE ARMY
U.S. ARMY CORPS OF ENGINEERS
WASHINGTON, D.C. 20314-1000

REPLY TO
ATTENTION OF:

CEPR-P (715)

10 JUN 2002

MEMORANDUM FOR COMMANDERS/DIRECTORS, ALL USACE COMMANDS
(DIRECTORS/CHIEFS OF CONTRACTING)

SUBJECT: PARC Instruction Letter 2002-12, Indefinite Delivery Contracts

1. In accordance with EFARS 1.201-100, this PARC Instruction Letter (PIL) is issued to amend and revise the language in the EFARS pertaining to Part 16, and subsection 36.601-3-90.

2. Substitute the enclosed pages as follows:

Remove page(s)

16-0 through 16-3

36-3 through 36-9

Insert page(s)

16-0 through 16-2

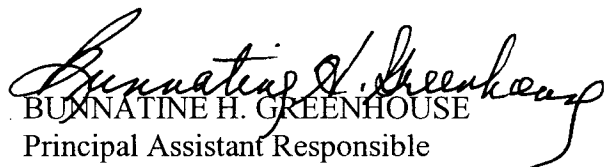
36-3 through 36-8

3. If the subordinate command prefers to rely on a printed EFARS book (as opposed to the electronic EFARS on the PARC homepage), each substituted page is to be stamp dated on the bottom of the page with the corresponding date of this memorandum. Upon completion of the page removals, addressees are to post the PIL with the regulation. Addressees are also to ensure distribution of this PIL to all staff elements as necessary (i.e., engineering, construction, and legal offices).

4. Questions concerning this PIL should be directed to the EFARS Working Group Leader, Wayne Hardin at (202) 761-8647, Email clyde.w.hardin@usace.army.mil.

FOR THE COMMANDER:

Encl.


BUNATONE H. GREENHOUSE
Principal Assistant Responsible
for Contracting

PART 16 — TYPES OF CONTRACTS

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PART 16 — FEDERAL ACQUISITION REGULATIONS SYSTEM

SUBPART 16.5 — INDEFINITE-DELIVERY CONTRACTS

16.501 General

(S-101) Applicability.

This subpart applies to all USACE indefinite delivery contracts (IDCs), including contracts for architect-engineer (A-E) services (see Subpart 36.6).

(S-102) Planning for Use of IDCs.

(a) Planning for use of IDCs will be documented in the Overall Acquisition Strategy (see Part 7).

(b) The scope of each IDC shall be as specific as possible, rather than consolidating a broad range of services or supplies (such as multiple North American Industrial Classification System (NAICS) codes), and limited to known or reasonably expected requirements within the geographical boundaries of the originating organization or regional business center.

(c) The contracting officer must make every reasonable effort to ensure that sufficient work is available for award under the contract to avoid the potential for an underutilized contract. Each contract to be awarded must provide a reasonable expectation for the maximum amount of the contract.

(d) The solicitation should include an estimated workload for each performance period for purposes of evaluating capacity to accomplish the required work.

(S-103) General Limitations on Use of IDCs.

(a) IDCs may be used *only if* one or more of the following conditions applies --

(1) The cost to procure the required services or supplies individually through normal selection procedures is uneconomical compared to the cost of the services or supplies themselves;

(2) the time required to procure the required services or supplies individually through normal selection procedures will cause an unacceptable delay

in fulfilling the requirements;

(3) technical continuity among related requirements is essential;

(4) significant cost savings in contract price and/or contract administration will accrue by having a single contractor perform several similar requirements; or

(5) management of more than one contractor on an installation presents unacceptable administration problems in such areas as coordination and movement of work forces and equipment, separation and acceptance of contractor responsibility, and verification of performance and progress.

(b) The maximum amount for each individual IDC shall be based on an analysis of the type of work, anticipated workload, effects on competition, and the capability of small businesses to compete for the required work.

(c) A maximum amount may either be specified for individual periods of the contract or for the total life of the contract (base period plus all option periods).

(d) For a multiple award IDC procurement, generally, the maximum amount for each IDC should equal the total anticipated requirements for the procurement in order to allow each awardee fair opportunity to be considered for each task order.

(e) The contract file will be documented prior to release of the solicitation with the appropriate analysis and coordination for the contract decisions mentioned above, in sufficient detail to justify each decision.

16.504 Indefinite-quantity contracts.

(a)(1) The dollar amount for the stated minimum quantity shall be obligated at the time of the award of the base contract (preferably by simultaneous issue of the first order) and at the time of exercising each contract option. Each IDC shall require the Government at a minimum to order supplies or services priced at:

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(i) Two percent of the stated maximum for the base period or \$500,000, whichever is less, and

(ii) For any option period that is exercised, one percent of the stated maximum or \$250,000, whichever is less.

(iii) When a maximum amount is specified for the total life of the contract (see 16.501 (S-103) (c)) the minimum amount shall be calculated based on the average amount per period (i.e. maximum amount divided by number of periods). For a multiple award IDC procurement (see 16.501 (S-103) (d)), the minimum amount shall be based on the average amount per period divided by the number of contracts.

16.505 Ordering.

(b)(1) When two or more IDCs contain the same or overlapping scopes of work so that a particular task order might be issued under more than one of the contracts (including multiple award contracts), the solicitations and the contracts shall state the criteria to be used by the government when selecting the contract that best meets its need. The criteria shall provide a fair opportunity for all awardees to be considered for each order.

(i) Appropriate criteria include performance and quality of deliverables under the current IDCs, an awardee's ability to accomplish the order in the required time, uniquely specialized experience, price (except for A-E services), and other relevant factors.

(ii) Appropriately document the contract file with support for the contracting officer's decision in selecting a particular contractor for task order award.

(5) Each IDC resulting from a multiple award shall include a statement substantially as follows:

“(i) More than one contract is being awarded for the same scope of work as this contract. Each contractor will be afforded a fair opportunity to be considered for each task (or delivery) order in excess of \$2,500, except as provided at FAR 16.505 (b)(2).

(ii) The contracting officer will consider the following factors when awarding a task (or delivery) order: [insert factors such as those listed in FAR 16.505(b)(1) and (b)(1)(i) above].

(iii) If the contractor believes it was not fairly considered for a particular task (or delivery) order, the contractor may present a complaint to the contracting officer. The contractor may appeal the explanation or decision of the contracting officer to the USACE Ombudsman, who is assigned to the USACE Office of the PARC, at the following address: Headquarters, U.S. Army Corps of Engineers, Attention: CEPR-P (USACE Ombudsman), 441 G Street, N.W., Washington, D.C. 20314-1000. The ombudsman will review the contractor's complaint in accordance with FAR 16.505 (b)(5).”

SUBPART 16.6 — TIME-AND-MATERIALS, LABOR-HOUR, AND LETTER CONTRACTS

16.603 Letter contracts.

16.603-3 Limitations.

For application to emergency/disaster situations see EFARS 17.74.

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PART 36 — CONSTRUCTION AND ARCHITECT-ENGINEER CONTRACTS

36.213 — Special procedures for sealed bidding in construction contracting

36.213-2 Presolicitation notices.

- (a) Effective 1 January 2000, Federal Acquisition Regulation 36.213-2, Presolicitation Notices are waived for all construction contracts which are synopsisized electronically through the online Commerce Business Daily (CBD) and/or District web pages posted on the internet.

36.271 Cost-plus-fixed-fee contracts.

Requests to use cost-plus-fixed-fee contracts for construction or A-E services funded by annual military construction appropriations shall be forwarded to HQUSACE, ATTN: CEPR, through normal command channels. See FAR 16.306(c)(2) and DFARS 236.271.

SUBPART 36.5 — CONTRACT CLAUSES

36.516 Quantity surveys.

36.516-100 Hydrographic quantity surveys.

The clause at FAR 52.236-16 shall be used for dredging or underwater material placement when payment is to be based on quantity surveys. Alternate I of clause 52.236-16 may be used only in exceptional circumstances with the prior approval of the Commander. The preferred methods of performing hydrographic quantity surveys (in descending order) are as follows:

- (1) The Government shall perform quantity surveys by using qualified in-house survey crews, if available.

- (2) The Government shall provide quantity surveys by contracting directly with qualified independent hydrographic survey contractors.

- (3) The Government shall permit, in exceptional circumstances only, the use of the dredging

contractor's surveys if the contracting officer determines that such surveys are adequate and reasonable for payment purposes, and a Government inspector, qualified in hydrographic surveying, is present during the collection of the survey data.

36.570 Additional provisions and clauses.

- (b)(2) Director/Chief of Contracting are hereby authorized, without power of redelegation, to approve the use of either of the clauses at DRARS 252.236-7003 (Payment for Mobilization and Preparatory work), or DRARS 252.236-7004 (Payment for Mobilization and Demobilization) in solicitations and contracts for construction.

36.5100 Plant and material removal after contract termination.

Insert the clause at 52.236-5000, Plant and Material Removal after Contract Termination, in solicitations and contracts when a civil works "continuing contract" (see 32.703-2-100) that also contains the clause at DFARS 252.236.7003, Payment for Mobilization and Preparatory Work, is contemplated.

SUBPART 36.6 — ARCHITECT-ENGINEER SERVICES

36.600-90 Authority for architect-engineer contracting.

Only centers and districts are authorized to procure A-E services. Other USACE commands will obtain contracting support for A-E services from a center or district.

36.601 Policy.

36.601-3 Applicable contracting procedures.

(S-100) The Directors/Chiefs of Contracting may, at their discretion, designate individuals to purchase A-E services by Government credit card. Only small business firms may be used (provided there are at least three highly qualified small businesses that can

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perform the work) and A-E selection must be conducted in accordance with FAR 36.602 and its supplements. The short selection process in 36.602-5 may be used.

36.601-3-90 Applicable contracting procedures.

(a) Indefinite delivery contracts (IDCs) for A-E services shall comply with Subpart 7.1 and Subpart 16.5.

(b) An A-E IDC shall not exceed \$3,000,000 and a term of 3 years, except an A-E IDC set aside for small businesses (including HUBZones or 8(a) program) and shall not exceed \$5,000,000 and a term of 5 years.

(c) For any task order expected to exceed \$500,000, document the contract file to justify why a task order was used instead of publicly announcing the requirements.

(d) The contracting officer may include option periods in the contract (see FAR 17.2 Options) provided --

(1) The option(s) is publicized with the basic contract requirement in accordance with FAR Part 5;

(2) The scope of work under the option(s) is specified in the basic contract;

(3) The prices for services under the option(s) are specified in the basic contract; and

(4) There is a reasonable anticipation of the need for similar services beyond the basic contract period.

(e) Requests for individual or class waivers to the monetary limit and/or term limits in (b) may be submitted for approval, provided --

(1) The basis for the waiver is justified by a formal or informal acquisition plan (see 7.102) and is supported by quantitative information concerning specific anticipated requirements.

(2) The approval is obtained prior to the public announcement.

(3) For a waiver of the term limit, explain why the need for continuity of services clearly outweighs the adverse impacts on competition.

(f) Waivers may be approved prior to public announcement as follows:

(1) By the Division Director of Contracting, for increases in the contract amount up to 100 percent.

(2) By the PARC, for greater increases in the contract amount or for any increases in the term limit.

(g) Waivers approved after the issuance of the public announcement must be reflected in an amended public announcement.

(h) A change in the terms of an IDC after the closing date of a public announcement requires a J&A in accordance with FAR 6.303 and 6.404.

(i) The USACE procuring contracting officer shall provide written instructions to the installation contracting officer and facilities engineering personnel regarding the limitations and procedures for the negotiation, issuance and administration of task orders. These instructions will address USACE and installation responsibilities under FAR 36.604, 36.605, 36.606, 36.608, 36.609-1, and 36.609-2, and DFARS 236.606-70.

36.601-4 Implementation.

(a)(4)(A) In USACE "surveying and mapping services" includes activities associated with measuring, locating and preparing maps, charts, or other graphical or digital presentations depicting natural and man-made physical features, phenomena, and legal boundaries of the earth, such as:

(1) Topographic Engineering Surveying, which includes acquisition of topographic oriented surveying and mapping data for design, construction, master planning, operations, as-built conditions, precise structure stability studies utilizing conventional and

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electronic instrumentation, photogrammetric, remote sensing, inertial, satellite, and other survey methods as applicable.

(2) Hydrographic Engineering Surveying, which includes acquisition of hydrographic oriented surveying and mapping data for design, construction, dredging, master planning, operations, and as-built conditions utilizing conventional and electronic instrumentation, and photogrammetric, remote sensing, inertial, satellite, side scan sonar, subbottom profiling, and other surveying methods as applicable.

(3) Land Surveying, which includes property and boundary surveys, monumentation, marking and posting, preparation of tract descriptions, etc., utilizing conventional, electronic instrumentation, photogrammetric, inertial, satellite, and other survey methods as applicable.

(4) Geodetic Surveying, which includes 1st, 2nd, and 3rd order horizontal and vertical control surveys, geodetic astronomy, gravity and magnetic surveys utilizing conventional, electronic instrumentation, photogrammetric, inertial, satellite, and other survey methods as applicable.

(5) Cartographic Surveying, which includes acquisition of topographic and hydrographic oriented surveying and mapping data for construction of maps, charts, and similar products for general use other than those for engineering, construction, and/boundary or geodetic purposes - utilizing conventional and electronic instrumentation, photogrammetric, inertial, satellite, and other survey methods as applicable.

(6) Mapping, charting, and related geospatial database development, which includes the design, compilation, digitizing, attributing, scribing, drafting, printing and dissemination of printed or digital map, chart, and related geospatial database products associated with planning, engineering, operations, and related real estate activities utilizing photogrammetric, geographic information systems, and other manual and computer assisted methods as applicable.

(7) Technical Operations, such as aerial photography, are not considered surveying and

mapping services unless they are an integral part of a broader-scoped contract that results in a surveying or mapping product.

(B) The performance of surveying and mapping services will not be limited to registered or licensed architect-engineer firms, but will also include surveying and mapping professionals such as licensed surveyors, geodesists, and cartographers.

36.602 Selection of firms for architect-engineer contracts.

(S-100) Advance selection process.

(i) General. If two or more architect-engineer (A-E) contracts for the same type of work are reasonably anticipated in a given period in a particular geographic area, a single synopsis and selection process covering that type of work may be conducted prior to receiving specific authorization for any work of that type. The contracts must have similar requirements such that generally the same firms would have been interested and selected if the contracts were synopsized and selected individually. Contracts resulting from such a synopsis may be awarded for a period of up to one year after the date of selection approval.

(ii) Synopsis and Selection. The synopsis will indicate that none of the projects are yet authorized and that funds are not presently available. All of the selected firms must be technically equal, based on the primary selection criteria (professional qualifications, specialized experience and technical competence, knowledge of the locality, capacity and past performance). The ranking of the selected firms must be based only on secondary factors (geographic proximity, extent of small business participation and equitable distribution of work). The selected list of firms must be used for all work of the designated type during the period stated in the public announcement. Separate synopsis for the specific contracts for this type of work shall not be issued later unless specifically identified as excluded in the advance selection synopsis.

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(iii) Negotiation. When the first contract for the designated type of work is authorized, negotiations shall begin with the top ranked firm. When a subsequent contract is authorized or negotiations on a previously authorized contract have not been successful, negotiations shall begin with the next ranked firm that has not been offered a contract for negotiation. If the list of ranked firms is exhausted, the negotiations cycle shall begin again with the top ranked firm.

36.602-2 Evaluation boards.

(a)(i) USACE commanders are authorized to appoint preselection and selection evaluation boards for all contracts.

(ii) All USACE Federal and non-Federal customers may be invited to nominate representatives, including private practitioners of architecture, engineering and related professions, as members of the evaluation boards for their projects. The customer representative(s) shall be appointed by the respective evaluation board chairperson, and voting representative(s) shall meet the qualifications in FAR 36.602-2(a).

(S-100) The purpose of a preselection board is to recommend to the selection board only the highly qualified firms that have a reasonable chance of being considered as most highly qualified by the selection board.

36.602-4 Selection authority.

(a) Division commanders shall be the selection authority. This authority may be redelegated, including, but not limited to, their deputies, district commanders, contracting officers, directors or chiefs of engineering, or other appropriate officials who do not have a conflict of interest.

36.602-5 Short selection process for contracts not to exceed the simplified acquisition threshold.

(a) Selection by the Board. One person with the appropriate expertise may constitute the selection board for an A-E selection which does not exceed the micro-purchase threshold. A brief selection report (1

paragraph) will be prepared for the file listing at least three most highly qualified firms that were considered and the reason(s) the firm selected for negotiations was the highest qualified.

36.603 Collecting data on and appraising firms's qualifications.

(b) All SFs 254 and 255 received from firms in response to a CBD synopsis or other public announcement shall be retained at least 30 days after the last debriefing is held. Only the SFs 254 and 255 of the selected firms (see FAR 36.602-4(b)) need to be retained in the contract files to satisfy the requirements of FAR 4.803(a)(10).

36.604 Performance evaluation.

(S-100) The performance evaluation process shall be discussed with an A-E firm during contract negotiations and this discussion recorded in the price negotiation memorandum. A firm shall be kept apprised in writing of the quality of its work at appropriate times throughout contract performance.

(3) An interim evaluation should be prepared at any time the A-E's performance is marginal or unsatisfactory during the design or construction phases. Any interim evaluation shall be sent to the Architect-Engineer Contract Administration Support System (ACASS; see DFARS 236.201(c)). Interim evaluations in ACASS will be replaced by the final evaluation for that phase of work. The final evaluation will record any interim evaluation(s) and the actions taken by the firm to remedy any significant deficiencies.

(4) The contracting officer shall notify a firm in writing of the Government's intent to issue an interim or final marginal or unsatisfactory performance evaluation. Include the proposed evaluation with documentation supporting the basis for the evaluation and offer an opportunity to comment. The firm shall also be advised of its right to appeal its evaluation in accordance with the procedures in EP 715-1-7, Architect-Engineer Contracting. The firm may appeal a marginal or unsatisfactory rating to the District Commander. If the District Commander determines

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that a rating of marginal is appropriate, the rating is final. If the District Commander determines that a rating of unsatisfactory is appropriate, the firm may appeal the determination to the Division Commander (or the Chief of Engineering and Construction, HQUSACE, for a contract awarded by a center). The determination of the Division Commander is final. Marginal or unsatisfactory interim or final evaluations that are contested by a firm shall not be sent to ACASS until the appeal process has been completed.

(c) A copy of each performance evaluation shall be sent to the firm, to ACASS, and included in the official contract file.

(S-101) Prepare an individual evaluation for each IDC task order over \$25,000 after the completion of the engineering or design services and after the completion of construction, if applicable. An interim or final evaluation covering an entire IDC is not required.

(S-102) Prepare an interim evaluation at least annually for each contract and for each IDC task order with a performance period anticipated to exceed 12 months.

36.605 Government cost estimate for architect-engineer work.

(a) The intent of a Government estimate is to determine a price for the required work that is fair and reasonable to the Government. Except for a task order, an estimate shall be prepared independently of any cost or pricing data provided by the firm, and will use labor and overhead rates representative of the class of A-E firms that have been selected as most highly qualified to perform the required work. Class factors include firm size, market area, specialization and capabilities. For example, rates for national "top 100" firms would be used for the design of a major military command headquarters, while the rates for local, medium-to-small size firms would be used for the design of a maintenance building. A Government estimate for a task order will use the labor, overhead and other rates established in the indefinite delivery contract.

36.606 Negotiations.

36.606-70 Statutory fee limitation.

(c) The following are examples of services that, for the purpose of this section only, are not considered an integral part of the preparation of designs, plans, drawings, and specifications, and may be excluded from the A-E fee when determining compliance with the statute.

(i) Initial site visits.

(ii) Field, topographic, property, boundary, utility, and right-of-way surveys.

(iii) Subsurface explorations and borings; soils and materials testing and resultant reports.

(iv) Feasibility, functional, and economic studies.

(v) Flow gaugings, model testing.

(vi) Preparation or verification of as-built drawings.

(vii) Preparation of general and development criteria.

(viii) Preparation of general and feature design memoranda.

(ix) The services of consultants, where not specifically applied to the preparation of designs, plans, drawings or specifications.

(x) Preparation of environmental impact assessments, statements, and supporting data.

(xi) Construction phase services.

(xii) Models, renderings, or photographs.

(xiii) Reproduction of designs for review purposes.

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(xiv) Travel and per diem allowances in connection with services that are not directly related to the preparation of designs, plans, drawings, or specifications.

36.607 Release of information on firm selection.

(a) The selection board chairperson shall notify, in writing or electronically, all firms of their selection status within 10 days after approval of the selection. Notifications shall not be made after a preselection board. The notification shall indicate to the firm that it is: (i) The highest rated, (ii) Among the most highly qualified firms but not the highest rated, or (iii) Not among the most highly qualified firms. The notification shall also inform each firm that it may request a debriefing in accordance with paragraph (b) below. Within 10 days after contract award, all remaining most highly qualified firms shall be so notified.

(b) A written or electronic request for a debriefing must be received by the selection chairperson within 10 days after the date on which the firm received the notification. Debriefing should occur within 14 days after receipt of the written request, unless impractical and the reason is documented in the contract file. Debriefing will be conducted by the selection board chairperson or his/her designee.

36.609 Contract clauses.

36.609-1 Design within funding limitations.

(c) Insert this clause in indefinite-delivery contracts, when applicable. In place of a specific construction funding limitation, insert "as specified in individual task orders."

(c)(1) Commanders are authorized to make the determination.

36.609-2 Redesign responsibility for design errors or deficiencies.

(b) Insert this clause in indefinite-delivery contracts.

36.609-3 Work oversight in architect-engineer contracts.

Insert this clause in Indefinite-delivery contracts.

36.609-4 Requirements for registration of designers.

Insert this clause in indefinite-delivery contracts.

36.702 Forms for use in contracting for architect-engineer services.

(a) Use Standard Form 252 also to award indefinite-delivery contracts for architect-engineer services.